

UNITED STATES DISTRICT COURT

Northern District of California

San Francisco Division

KENDRA NICOLE WALKER,

No. C 13-03601 LB

Plaintiff,

**ORDER (1) GRANTING PLAINTIFF'S
ADMINISTRATIVE MOTION FOR
LEAVE TO FILE A LATE
OPPOSITION, (2) DISCHARGING
THE COURT'S ORDER TO SHOW
CAUSE, AND (3) CONTINUING THE
HEARING ON DEFENDANT'S
MOTION TO STAY**

v.

MB FINANCIAL BANK, N.A.,

Defendant.

[Re: ECF Nos. 11, 25]

Plaintiff Kendra Nicole Walker filed this action against defendant MB Financial Bank, N.A. on August 2, 2013. Complaint, ECF No. 1.¹ She filed a First Amended Complaint on August 27, 2013. FAC, ECF No. 5. MB Financial answered her First Amended Complaint on September 18, 2013. Answer, ECF No. 9. All parties have consented to the undersigned's jurisdiction. Consent (Ms. Walker), ECF No. 7; Consent (MB Financial), ECF No. 14.

On September 23, 2013, MB Financial filed via the court's ECF system a motion to stay this action during the pendency and resolution of an Illinois state court case that was initiated prior to this action. Motion, ECF No. 11. This meant that Ms. Walker's deadline to file an opposition was October 7, 2013. She did not, and she also did not file a statement of non-opposition. Thus, the

¹ Citations are to the Electronic Case File ("ECF") with pin cites to the electronically-generated page numbers at the top of the document.

1 court ordered her to file a written response by Tuesday, October 15, 2013 showing cause why she
2 failed to file either an opposition or a statement of non-opposition to MB Financial's motion to stay
3 this action. First Order to Show Cause, ECF No. 18. The court also noted that the failure to file a
4 response could be construed as a non-opposition to MB Financial's motion and result in it being
5 granted. *Id.*

6 On October 14, 2013, Ms. Walker filed a response. Response to First Order to Show Cause,
7 ECF No. 19. In it, her counsel explains that while her opposition to MB Financial's motion is
8 "substantially completed," "on the due date of the opposition, [he] suffered a flareup of a chronic
9 cardiac condition which required emergency medical attention" and prevented him from filing the
10 opposition on time. *Id.* That same day, the parties filed a stipulation that, among other things,
11 continued the deadline for Ms. Walker to file her opposition to October 28, 2013, the deadline for
12 MB Financial to file any reply by November 4, 2013, and the hearing on the motion to December 5,
13 2013. Stipulation, ECF No. 20. The court granted the stipulation on October 15, 2013. Granted
14 Stipulation, ECF No. 21.

15 October 28, 2013 came and went without Ms. Walker filing an opposition. So, the court ordered
16 her to file a written response by Tuesday, November 5, 2013 showing cause why she has failed to
17 file either an opposition or a statement of non-opposition to MB Financial's motion to stay this
18 action. Second Order to Show Cause, ECF No. 23. On November 5, 2013, Ms. Walker filed a
19 response. Response to Second Order to Show Cause, ECF No. 24. In it, her counsel says that he
20 was confused because he was under the impression that MB Financial and he had agreed to stipulate
21 to stay the case further to allow the parties to discuss settlement. *Id.* Indeed, Ms. Walker's counsel
22 says that MB Financial's counsel was preparing a stipulation to temporarily stay the case and
23 continue the hearing on MB Financial's motion from December 5, 2013 to January 16, 2014. *Id.*
24 No stipulation has been filed, however.

25 Then, on November 8, 2013, Ms. Walker filed both an administrative motion seeking leave to
26 file a late opposition as well as her opposition. Administrative Motion, ECF No. 25; Opposition,
27 ECF No. 27. Obviously, Ms. Walker should have waited to see if the court granted her
28 administrative motion seeking leave to file a late opposition before she went ahead and filed it, but

1 given that MB Financial has not opposed Ms. Walker's administrative motion (and the time for
2 doing so has passed), the court **GRANTS** Ms. Walker's administrative motion. MB Financial may
3 file a reply by November 21, 2013 (seven days from the date of this order).

4 In light of this situation, the court also **DISCHARGES** the order to show cause and finds good
5 cause to **CONTINUE** the hearing on MB Financial's motion to stay to January 16, 2014 at 11:00
6 a.m.

7 **IT IS SO ORDERED.**

8 Dated: November 14, 2013



9 LAUREL BEELER
10 United States Magistrate Judge
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